

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 55 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

G S R T C

Versus

HEIRS OF NARMADASHANKAR BHAGVANDAS THAKAR

Appearance:

MR MD PANDYA for Petitioners

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/03/99

ORAL JUDGEMENT

C.A.V. JUDGEMENT

1. This second appeal under section 100 of Code of Civil Procedure, 1908 is directed against the judgment and decree of the Assistant Judge, Mahesana dated 9-7-1980 in Regular Civil Appeal No.2 of 1978 reversing the judgment and decree of Civil Judge, (J.D.), Harij dated 24-11-1977 in Regular Civil Suit No.66 of 1973.
2. The plaintiffs-respondents sued for possession of ordi and surrounding open land and to get the mesne

profit for the period from which the defendants-appellants have taken the possession of the suit property till they actually got the possession and for permanent injunction restraining the defendants-appellants to demolish the construction of the ordi.

3. The facts of this case are that the suit has been filed by the plaintiffs-respondents on the ground that on 1-10-1973, the defendant-appellants have illegally taken the possession of this property - ordi and surrounding land, which is situated in the compound of Harij depot of S.T.R.C. at Harij and prayer has been made for declaration, injunction and restoration of the possession of the suit property and mesne profits.

4. The suit of the plaintiffs-respondents has been contested by the defendants-appellants by filing written statement at Ex.16. The defendants-appellants have come up with a case that they are the owners and in possession of the original survey No.285 duly acquired by the State Government under the provisions of Land Acquisition Act, 1894 for them and compensation is also paid for the acquisition of the said land to the plaintiffs-respondents. The Harij depot at Harij is constructed by the defendants-appellants upon this original survey No.285. Prayer has been made for dismissal of the suit of the plaintiffs in toto.

5. On the basis of the pleadings of the parties, learned trial Court framed as many as 9 issues at Ex.19, which read as under:

1. Whether the plaintiff proves that Govt. acquired the land of hector 1, R.A. 67 sq. meter by giving award on 7-12-1970 for the State Road Transport Corporation ?
2. Whether the plaintiff proves that the land acquired with hedge with the hut was not acquired by the Govt. ?
3. Whether the plaintiff proves that the said hut was used by him for keeping implement, bullock cart etc., for the purpose of agriculture ?
4. Whether the plaintiff proves that the defendant and his agents have destroyed the said hut and caused damage to it ?
5. Whether the plaintiff is entitled for

declaration, injunction and possession as prayed by him ?

6. Whether the defendant proves that the disputed land was acquired by the Govt. for the Corporation ?

7. Whether the defendant is in possession of the suit land ?

8. Whether the defendant proves that plaintiff himself removed the material from the disputed hut ?

9. What order and what decree ?

6. The trial Court decided the issues No. 1, 2, 4, 5 and 8 in negative whereas the issues No.3, 6 and 7 were decided in affirmative. The trial court has therefore decided that the land of 1 Hector 67 R.A. 67 meters has been acquired by the Govt. for State Road Transport Corporation and award has been given on 7-12-1970. It has been held by the Court that the land surrounded by hedge with the hut was acquired. Issue No.3 that the plaintiff was using the said hut for keeping implements, bullock cart etc. has been decided in favour of the plaintiffs-respondents. Under issue no.4 it is decided that the plaintiffs have failed to prove that the defendants-appellants has destroyed the said hut and caused damage to it. Under issue no.5, the trial Court decided that the plaintiffs-respondents are not entitled for declaration, injunction and possession as prayed in the suit. Issue no.6 has been decided in favour of the defendants-appellants that the land in dispute has been acquired by the Government for Corporation. Issue no.7 has been decided in favour of the defendants that they were in possession of the suit land. Issue No.8 has been decided against the defendants-appellants. By issue No.9, the suit has been dismissed.

7. The plaintiffs-respondents filed an appeal against the judgment and decree of the trial court in the court of District Judge at Mahesana which came to be decided by the Assistant Judge, Mahesana on 9-7-1980 and the same has been allowed. Hence, this second appeal before this Court.

This court while admitting the appeal has framed following substantial questions of law:

1. Whether on the facts and in the circumstances of

the case a Civil Court had jurisdiction to entertain a suit of the present character and grant relief as is granted by the learned Assistant Judge, in view of the provisions of the land acquisition Act and whether remedy if any available to plaintiff is an appropriate proceeding under the said Act.

2. Whether on the facts and in the circumstances of the case on acquisition of the suit land and its vesting in the state free from any encumbrance, the superstructure standing thereon does also get vested leaving only a right to claim compensation by appropriate proceedings under Land Acquisition Act.

3. Whether in view of the finding of the learned Judge that there has been lawful acquisition of the land and that its possession is also lawfully taken, the finding about taking over possession of the superstructure is unauthorised and is legally sustainable.

8. Learned counsel for the appellants contended that the first appellate court has completely misconstrued the provisions of Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). The land of survey No.285 of the plaintiffs has been acquired and the superstructure which was there on this land for which no separate acquisition notice is required. Whatever superstructure or the constructed buildings are there on the land acquired will be part of the acquisition proceedings and will go with the land. The possession has been given to the plaintiffs-respondents of the land acquired and the suit filed by the plaintiff itself is not maintainable. The first appellate court has though accepted that whole of the land has been acquired and the land below superstructure and surrounding is a part of survey No.285, the acquired land, but even after giving this finding and declining the prayer of the plaintiffs-respondents of restoration of possession of the superstructure with enclosed land it has passed the decree for payment of the mesne profit for the period from date of possession till the superstructure is legally acquired.

9. Nobody has put appearance on behalf of the respondents.

10. I have given careful consideration to the submissions made by the learned counsel for the

appellants and perused the judgment of both the courts below.

11. From the operative part of the judgment of the appellate court, I find that the suit of the plaintiffs-respondents for possession of the superstructure and the land below superstructure and the land surrounding the said superstructure was dismissed. Prayer of the plaintiff in the suit was for declaration and possession, and the trial court after recording a finding that whole of the superstructure and surrounding land of the superstructure has been acquired and possession of the superstructure and land thereunder and the surrounding land have been taken by the defendants-appellants, and the suit for the possession of the superstructure and land underneath superstructure and the surrounding land has been dismissed. The appellate court passed the decree for mesne profit and injunction to restrain the defendants-appellants to demolish this superstructure till the amount of mesne profit is decided and paid. This decree has been passed on the ground that the superstructure was not acquired and the possession taken thereof was not legal possession of the defendants-appellants. This possession which is illegal as per the appellate court has to be legalised by the defendants-appellants by acquiring the super structure and till this exercise is undertaken, the plaintiffs-respondents is entitled for mesne profit for the period from the date of taking over the possession till the possession taken by the defendants-appellants is regularised by them in the way and the form as suggested by the first appellate court.

12. From the judgment of the first appellate court, I find that the award under sec. 11 of the Land Acquisition Act, 1894, Ex.33 was given by the Land Acquisition Officer on 7-12-1970. The possession of this land was taken on 18-12-1970 and as per the case of the plaintiff, the possession of the superstructure was taken on 1-10-1973. There is no dispute in the present case that the award for the land of survey No.285 paiki which included the land under and surrounding superstructure has been made by the Land Acquisition officer and that award has not been challenged by the plaintiffs-respondents on the ground that the possession of superstructure has not been given. The first appellate court on the basis of the documents Ex.34 and 35, notifications under section 4 and 6 of the Land Acquisition Act, 1894, award Ex.33 and other documents Ex.41, 54, 55 and 56 has held that the superstructure was not acquired by the State Government for the Corporation.

Relying on the panchnama Ex.40, the first appellate court has recorded a finding that it is silent about handing over the possession of the superstructure to the defendants-appellants.

13. The learned first appellate court has recorded a finding of fact that after acquisition of 1 Hectare 67 Are and 67 sq. mt. land of survey NO.285 paiki no land has been left unacquired on the spot. The first appellate court has further recorded a finding of fact that after acquiring 1 Hectare 67 Are and 67 sq. mt. of land, land below the superstructure and surrounding the superstructure is not remained in possession of the plaintiffs-respondents as unacquired land.

14. Before proceeding further with this judgement I consider it to be proper to have glance on the relevant provisions of the Act.

Section 3 (a)

- (a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

Section 3 A

Preliminary survey of lands and powers of officers to carry out survey - For the purpose of enabling the State Government or the Commissioner to determine whether land in any locality is needed or is likely to be needed for any public purpose, it shall be lawful for any officer of the State Government in the Public Works Department, or any other officer either generally or special authorised by the State Government in this behalf, or as the case may be, any officer authorised by the Commissioner and for his servants and workmen, -

- (i) to enter upon and survey and take levels of any land in such locality;
- (ii) to mark such level;
- (iii) to do all other acts necessary to ascertain whether the land is adapted for such purpose; and
- (iv) where otherwise the survey cannot be completed and the levels taken, to cut down and clear away any part of any

standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier atlest seven days notice in writing of his intention to do so.

Section 4 (1)

Publication of preliminary notification and powers of officers thereupon - 1. Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in tha locality of which at least one shall be in regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).

Proviso to Section 4 (2)

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so.

Section 6 (1)

Declaration that land is required for a public purpose (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the reftport, if any, made under section 5 A, sub-section (2) that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to the effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered

by the same notification under Section 4, sub-section (1) irrespective of whether one report or different reports has or have been made (whereever required) under Section 5-A, sub-section (2).

Section 6 (2)

Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration) and such declaration shall state the district or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

Section 6 (3)

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.

Section 7

After declaration Collector to take order for acquisition - Whenever any land shall have been declared to be needed for a public purpose or for a Company, the appropriate Government or some officer authorised by the appropriate Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

Section 9 (1)

Notice to persons interested - (1) The Collector shall then cause public notice to be given at

convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Section 9 (2)

Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under Section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

Section 11 (1)

Enquiry and award by Collector (1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the land (at the date of the publication of the notification under Section 4, sub-section (1)) and into the respective interests of the persons claiming the compensation and shall make an award under his hand of -

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whom claims, he has information, whether or not they have respectively appeared before him:

Section 12

Award of Collector when to be final - (1) Such

award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

- (2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

Section 16

Power to take possession - When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon (vest absolutely in the [Government]) free from all encumbrances.

Section 23

Matters to be considered in determining compensation (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take the consideration -

first, the market-value of the land at the date of the publication of the notification under Section 4 sub-section 1;

second, the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property,

movable or immovable, in any other manner, or his earnings ;

fifthly, if in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bonafide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

1-A, In addition to the market value of the land, as above provided, the court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1) in respect of such land to the date of the award of the Collector of the date of taking possession of the land, whichever is earlier.

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition.

Section 48 (1)

Completion of acquisition not compulsory, but compensation to be awarded when not completed (1)
Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

Section 48 (2)

Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested,

together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

Section 48 (3)

The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

15. After having glance on the provisions of the Act now I may deal with the substantial question of law framed in the second appeal by this Court.

Substantial question of law no.1.

16. In the case of The State of Kerala Vs. P.P.Hassan Koya AIR 1968 SC Pg.1201 in the context of the consideration of the provisions of the Act, the Honourable Supreme Court has considered the definition of the land given in the Act aforesaid. In Para No.4 and 5, the Court held as under:-

(4) Two questions were urged in support of the appeal:

(1) that the Receiver having accepted the award of the Land Acquisition Officer, the respondent could claim compensation only for the right which he had in the land and the buildings and the method adopted by the Land Acquisition Officer was in the circumstances the only appropriate method; and

(2) that the rate of capitalization was unduly high.

In our judgement, there is no force in either of the contentions. When land - which expression includes by S.3 (a) of the Act benefits to arise out of land and things attached to the earth or fastened to anything attached to the earth - is notified for acquisition, it is notified as a single unit whatever may be the interests which the owners thereof may have therein. The purpose of acquisition is to acquire all interests which clog the right of the Government to full ownership of the land, i.e.

when land is notified for acquisition, the Government expresses its desire to acquire all outstanding interests collectively. That is clear from the scheme of the Land Acquisition Act. Under S.11 of the Acquisition Act, the Collector is required to enquire into the objections raised by the persons interested in the land and into the value of the land at the date of the publication of the notification under S.4, sub-s. (1) and into the respective interests of the persons claiming the compensation, and then to make an award determining - (i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (iii) the apportionment of the compensation among all the persons known or believed to be interested in the land, whether or not they have respectively appeared before him. By the compulsory acquisition of land, all outstanding interests not vested in the Government are extinguished. It is therefore the duty of the Land Acquisition officer to determine in the first instance compensation which is to be paid for extinction of those interests, and then to apportion the compensation among the persons known or believed to be interested in the land. The Subordinate Judge had also, when a reference was made to him, to assess the value of the unit and then to apportion the compensation among persons entitled thereto. The rule could not be departed from merely because the Receiver in whom the Jenmi rights in T.S. No. 298/2 were vested failed to raise an objection to the quantum of compensation awarded to him. Again the respondent was the holder of kanam rights in the land, and the buildings on the land belonged to him. The respondent being Kanamdar, he had an interest in T.S. No. 298/2 and as Kanamdar the respondent was entitled to apportionment of compensation even in respect of the land.

- (5) We agree with the Trial Court and the High Court that the method adopted by the Land Acquisition Officer for determining compensation payable for extinction of the interest of the holder of the land and of the buildings separately was unwarranted. In determining compensation payable in respect of land with buildings, compensation cannot be determined by ascertaining the value of the land with buildings, compensation cannot be determined by

ascertaining the value of the land and the "break-up value" of the building separately. The land and the building constitute one unit, and the value of the entire unit must be determined with all its advantages and its potentialities. Under S.23 of the Land Acquisition Act compensation has to be determined by taking into consideration the market value of the land at the date of the publication of the notification under S.4(1) and the damage, if any, sustained by the persons interested under any of the heads mentioned in secondly to sixthly in S. 23 (1) of the Land Acquisition Act.

17. In the case of Chaturbhuj Pande Vs Collector, Raigarh AIR 1969 SC Pg.255 in the context of the definition of the land in the Act the Honourable Supreme Court has considered and observed as under:-

8. The High Court in our opinion was wrong in disallowing the statutory allowance permitted by Section 23(2) over the value of the trees. The High Court erred in thinking that the value of the trees falls under the second clause of Section 23 (1). The first clause of Section 23 provides for determining the market value of the land acquired. Section 3 (a) prescribes that "the expression 'land' includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth." Therefore the trees that were standing on the land were a component part of the land acquired. The High Court failed to notice that what was acquired are not the trees but the land as such. The value of the trees was ascertained only for the purpose of fixing the market value of the land. On the value of the land as determined, the court was vound to allow the 15 per cent allowance provided by Sec.23 (2) of the Act.

9. In Sub Collector of Godavari V. Seragam Subbaroyadu, (1907) ILR 30 Mad 151, the High Court of Madras held that the trees standing on the land acquired are 'things attached to the earth' and hence they are included in the definition in Section 3(a) and that definition must apply in construing Section 23 of the Act. It further held that the value of the trees as are on the land when the declaration is made

under Section 6 must be included in the market value of the land on which the allowance of 15 per cent should be given under Section 23 (2) of the Act. The same view was taken by the Allahabad High Court in Krishna Bai V. Secretary of State ILR 42 All 555 = (AIR 1920 All 101). We are satisfied that these decisions lay down the law correctly. No decision taking a contrary view was brought to our notice.

18. In the case of Bai Malimabu Vs. State of Gujarat AIR 1978 SC Pg. 551 their Lordship of Supreme Court has considered whether the land as defined in Section 3(a) of the Act includes super structures or not. The further question has been considered whether where on the land acquired the super structure is there it is required to be separately mentioned in the notification under section 4 of the Act. For the consideration in that case a submission was that notification under Section 4 is bad because therein the land has been specified but the super structure standing thereon was not mentioned. Their Lordship Supreme Court said that the definition of "land" in clause (a) of section 3 of the Act would include the super structure, standing thereon and needs not be mentioned separately in the notification.

19. Fruitfully reference may have to another decision of the Apex Court in the case of Ratankumar Tandon Vs. State of Uttar Pradesh, AIR 1996 SC Pg.2710 wherein the Court observed in the context of the question as to what would be the compensation of the buildings standing on the land acquired to which the appellant therein are entitled to. It is well settled law that when land and building are acquired by notification the claimant is not entitled for separate compensation for a building and land. They are entitled for the compensation of either of 2, but not of both. If the building is assessed it is settled law that the measure of assessment be made on either rent receipt of the property or the value of the building, is proper method of valuation. In that case since it was separately valued the Lordship of Supreme Court held that building cannot be again separately assessed and came to award the value of debris.

20. The land which is subject matter of dispute in the appeal was admittedly agricultural land and some stricture was also standing thereon. With reference to the the definition of the land as given in clause a of Section 3 of the Act, their Lordship of Supreme Court held in the case of State of Kerala Vs. P.P. Hassan

Koya (Supra) that the structure standing on the land deemed to have been included or stood included in the notification under Section 4 of the Act. In this case in the notification under Section 4 of the Act admittedly the land has been included and sufficient notice has been given to the plaintiff respondent by mentioning its survey number therein. The Learned First Appellate Court has fell in serious error in holding that the super structure has to be separately notified for the acquisition, its possession to be taken separately and separate compensation for it has to be determined. The super structure on the land in dispute includes in the land itself and when the land is vested in the State government free from all encumbrances the State Government is perfectly legal and justified to take the possession of the land as well as the super structure standing thereon. It is true that the physical and actual possession of the land and the super structure have not been taken simultaneously but it is hardly of any substance and merits. When the land vested free from all encumbrances in the State Govt. and the Corporation was legally entitled to take the possession of the land which include super structures and irrespective of the time gap in between the date of taking possession of the open land and super structure the possession of superstructure taken will not be taken to be illegal. In case the finding of the Lower Appellate Court and the reasons given in the judgement are accepted then the Section 3 (a) of the Act will become redundant and non workable. In Section 3(a) of the Act, the Court, in case reasoning of the first appellate is accepted has to read something more than what its contents though the legislature otherwise was not intending to frame that section in that language. The State Government in most of the case acquired the agricultural lands. Apart from this the land is a basic and fundamental bedrock of the building i.e. super structure. In the Revenue records or in the record maintained for the urban properties i.e. non agricultural lands the same is entered therein with reference to the survey number or the property number. So the land is the soul and the super structure is only the body. That is the reason that to overcome all these difficulties, confusions, complications, unwarranted objections and disputes the definition of the land in the Act is made sufficiently wide which includes therein the super structure also. From the scheme of provisions of the Act and what their Lordship of Supreme court also held that the land and the building are not to be separately notified and assessed for the compensation. Against the acquisition of the land normally two remedies are available to the aggrieved person i.e. to challenge

the acquisition or to go before the authority to take the proper determination of compensation to be paid for the acquisition thereof. In this case, the compensation has been determined and it is too difficult to accept that while determining compensation the LAO would not have taken note of the super structure standing on the land. Though there may be another important question which may arise for the consideration of the Court i.e. whether the super structure on land was authorised or not and whether the defendant is entitled for any compensation or not but as from this angle none of the Courts below has considered this matter nor the appellant has raised this point, I do not consider it to be necessary and proper to go any more on this issue. The sole grievance of the plaintiff respondent before the Courts below was that super structure is not separately notified and as such it will be taken to be as if not acquired is of no substance or merits. The Court cannot be oblivious of the fact that the super structure is there on the part of the land of the survey no. which has been acquired and when the land underneath the super structure had stood acquired the super structure will go with the land. The super structure cannot independently exists or stands or continues when the land over which it is standing stood acquired and vested in the Corporation. In the matter the Civil Court could not have gone into such questions. In this case the grievance of the plaintiff respondent was not against the acquisition of land but he has come up with a case that the possession of the super structure was not taken and it was also not acquired. The Corporation could not have taken the possession thereof. But in view of the position of law as stood settled this contention is not tenable and consequently Courts below in the suit could not have gone into this question. So in this case the suit of the plaintiff respondent for this grievance is certainly ill-advised and no relief could not have been granted by the first Appellate Court in his favour. The net result of this discussion is that in the facts of this case the grievance made by the plaintiff respondent in a suit was not tenable and accordingly the first substantial question of law stands answered against him.

Substantial question no.2.

21. This question infact stood answered by the judgement of this Court on substantial question no.1 and as such nothing substantial survives in it. In view of the provision of Section 3(a) of the Act and the decision of the Supreme Court, reference of which is made in earlier part of this judgement, the super structure vests

in the Government free from all encumbrances, however subject to the right to claim compensation in the appropriate proceedings under the Act for the acquisition thereof in accordance with law.

Substantial question no.3.

22. The substantial questions nos.1 and 2 are answered in favour of the appellant. In view of the fact that alongwith the land the super structure vests in the Govenrment free from all encumbrances and the State Government was legally competent to take possession of the land and the super structures the learned First Appellate court has committed illegality in hodling that the possession of the super structure was illegally taken by the Corporation.

23. In the result this second appeal succeed and same is allowed.The judgement and decree of Assistant Judge, Mahesana dated 9.7.1980 in Regular Civil Appeal No.2/78 is quashed and set aside and judgement and decree in Regular Civil Suit No.66/73 of Civil Judge (JD) Harij, is restored with costs throughout.

jitu